IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 27TH JUNE 2007 / 6TH ASHADHA 1929

Bail Appl..No. 3852 of 2007()

CRIME NO.579 OF 2007 OF EAST POLICE STATION, KOLLAM

: PETITIONER/ACCUSED

THALHATH, AGED 26 YEARS,
S/O ABDUL SAMAD, PANACKAL VEEDU,
KANNIMEL CHERRY, KILIKOLLUR, KOLLAM-4.

BY ADV. SRI.V.V.RAJA

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 27/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.3852 of 2007

Dated this the 27th day of June, 2007

ORDER

Application for anticipatory bail. Petitioner faces allegations, inter alia, under Section 468 I.P.C. The crux of the allegations against the petitioner is that he, with dishonest and fraudulent motives, got an account opened with a bank mis describing himself to be the defacto complainant. The defacto complainant, who had not gone to the bank and who had not opened any account, received an envelop from the bank enclosing cheque books. He was surprised and he made enquiries. It was revealed to him that someone has played a fraud and had opened an account in his name. He was worried and he gave instructions to the bank not to honour any cheque. Bank manager allegedly agreed. At that stage, the petitioner allegedly contacted him and wanted him to state to the bank officials that the name of the petitioner really was Thaha, that is the name of the complainant. The defacto complainant was not willing to oblige and he lodged the F.I statement before the police. Investigation is in progress. The petitioner apprehends that he may be arrested at any point of time. He therefore prays that directions under Section 438 Cr.P.C may be issued in favour of the petitioner.

2. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that available indications convincingly indicate the complicity of the petitioner. The possibility of some other miscreants also, including perhaps the bank manager, having acted in collusion with the petitioner cannot at this stage be ruled out, submits the learned Public Prosecutor. But at any rate, the petitioner may not be permitted to arm himself with an order of anticipatory bail at this early stage of proceedings. Such a course would hamper the smooth course of the investigation. The petitioner is to be arrested and interrogated for an effective, complete and exhaustive investigation in this case. The learned Public Prosecutor prays that this application for anticipatory bail may, in these circumstances, be dismissed. The petitioner's application for anticipatory bail was dismissed by the learned Sessions Judge by a detailed order, a copy of which is produced as Annexure-1.

3. Having considered all the relevant inputs, I am satisfied that there is absolutely no justification in the prayer to permit the petitioner to arm himself with an order of anticipatory bail. A thorough and exhaustive investigation is to be conducted to really ascertain the persons responsible for opening such an account fraudulently in the name of the defacto complainant. The conduct of the petitioner after the misdeed was revealed effectively points to

some role for him in the offence committed. The petitioner has got to be interrogated and arrested, if necessary, for a proper investigation. I am not satisfied that there is any justification in the prayer to invoke the extraordinary equitable discretion under Section 438 Cr.P.C. This, I am satisfied, is a fit case, where the petitioner must appear before the Investigating Officer or the learned Magistrate. He must then seek regular bail in the ordinary and normal course.

4. In the result, this application is, dismissed with the above observations.

(R.BASANT, JUDGE)

rtr/-